Filed 1/9/03 National American Ins. v. G & G Fire Sprinklers CA2/8

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

NATIONAL AMERICAN INSURANCE COMPANY, Plaintiff and Respondent, v. G & G FIRE SPRINKLERS, INC., et al., Defendants and Appellants.	B149727 (Super. Ct. No. BC 209020)

APPEAL from the judgment of the Superior Court of Los Angeles County. Robert L. Hess, Judge. Affirmed.

Booth, Mitchel & Strange, and David L. Hughes for Plaintiff and Respondent.

Robert G. Klein for Defendants and Appellants.

Defendants G & G Fire Sprinklers, Inc., Itai Ben-Artzi, Dalya Ben-Artzi, Rafael Rosenfeld and Ruth Rosenfeld appeal from the judgment entered after a jury found them liable to their construction bond surety for the costs of completing G & G's construction subcontract. For the reasons set forth below, we affirm the judgment.

FACTS AND PROCEDURAL HISTORY[1]

G & G Fire Sprinklers, Inc. (G & G) subcontracted to install fire sprinklers (the subcontract) at a Los Angeles County trauma center being constructed by general contractor Centex Golden Construction Company (Centex). As required by the subcontract, G & G took out a construction surety bond (the bond) that was issued by plaintiff and respondent National American Insurance Company (NAIC or the surety). A separate indemnification agreement backing up G & G's promise to repay any costs incurred by the surety under the bond was signed by defendants and appellants Itai Ben-Artzi, Dalya Ben-Artzi, Rafael Rosenfeld and Ruth Rosenfeld.[2]

The subcontract originally called for G & G to install fire sprinklers on only the first floor of the project. Sprinkler installation on the second floor was added by a later change order. According to Centex project manager Everett Gustafson, G & G had completed nearly 80 percent of the first floor work, which suffered from numerous defects. G & G never began work on the second floor. G & G ignored repeated demands to correct the defects on the first floor or begin work on the second floor. In September 1996, Centex declared G & G in default on the subcontract and notified the surety.

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[1] To the extent resolution of this matter turns upon the existence of substantial evidence to support the judgment, we state the facts in the manner most favorable to the judgment. (*Hirshfield v. Schwartz* (2001) 91 Cal.App.4th 749, 755, fn. 2.)

[2] Itai Ben-Artzi was the principal defense witness and we will refer to him as "Ben-Artzi." We will sometimes refer to G & G, Itai and Dalya Ben-Artzi and the two Rosenfelds collectively as "appellants."

Mike Tomeo of Sage Construction was hired by NAIC to investigate the dispute between G & G and Centex. Tomeo contacted both parties and looked into their respective claims. While Centex was cooperative and quickly produced all requested documents, G & G was not helpful and did not produce any documents. Based on the documentation obtained by Tomeo, John Trotter of NAIC concluded that G & G had not completed its subcontract and decided the best course of action was to hire another company to complete the work. Trotter's determination was based in part on G & G's failure to cooperate in the investigation or produce any documents connected with the project.

NAIC then sued appellants to recover its various costs incurred in having the subcontract completed. The complaint was based on both the surety bond and the indemnity agreement. The jury awarded NAIC $114,329.80, an amount later reduced by way of certain offsets to $90, 604.80. Appellants contend the trial court erred by denying their new trial motion, based on allegations that the trial judge was biased against them. They also contend that the surety's counsel committed misconduct during his closing argument and that there was insufficient evidence to support the verdict.

DISCUSSION

1. Judicial Bias Claim

A trial court commits misconduct if it makes persistent and frequent disparaging or discourteous comments about a party, his lawyer or his witnesses, which convey to the jury that they are not trustworthy or that the case lacks merit. (*People v. Fudge* (1994) 7 Cal.4th 1075, 1107 (*Fudge*).) The court's conduct is viewed under an objective standard to determine whether a reasonable person would entertain doubts about the court's impartiality. (*Hall v. Harker* (1999) 69 Cal.App.4th 836, 841; *Catchpole v. Brannon* (1995) 36 Cal.App.4th 237, 245-246.)

Bias or prejudice of a judge consists of a mental attitude or disposition for or against a party. When reviewing a charge of bias, " 'the litigants' necessarily partisan views should not provide the applicable frame of reference.' " (*Roitz v. Coldwell Banker Residential Brokerage Co.* (1998) 62 Cal.App.4th 716, 724, citations omitted.) Bias or prejudice must be clearly established. "Neither strained relations between a judge and an attorney for a party nor '[e]xpressions of opinion uttered by a judge, in what he conceived to be a discharge of his official duties, are . . . evidence of bias or prejudice.' " (*Ibid.*, citations omitted.) A judge is entitled to control the proceedings so they are fair and orderly and, to that end, the court may reprove counsel. (*People v. Bronson* (1968) 263 Cal.App.2d 831, 844-845; *People v. Harmon* (1953) 117 Cal.App.2d 511, 517-518 [trial judge is not required to remain silent when counsel acts improperly].)

Finally, the party asserting a claim of judicial bias must show he was prejudiced by the court's conduct. (See *Fudge, supra,* 7 Cal.4th at p. 1109; *People v. Archerd* (1970) 3 Cal.3d 615, 638.)

Appellants contend the verdict was tainted by the trial court's animosity toward them and their lawyer, mandating reversal. They base this claim on two general categories: First, erroneous evidentiary and instructional rulings; and second, various disparaging comments and other incidents occurring both in and out of the jury's presence. Most stem from the trial court's pretrial and mid-trial orders barring appellants from directly or indirectly using certain documentary evidence that they did not produce during discovery. As a result, not only were the documents excluded, so was any testimony based on those documents.[3] Another discovery-related evidentiary

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[3] Appellants' discovery responses stated they had no documents concerning the project, implying they had been lost or destroyed by their previous lawyer. At a hearing before jury selection began, appellants made known for the first time various reports generated from a personalized software program on Ben-Artzi's computer. The court excluded those documents. During the trial, appellants' expert witness admitted that in forming his opinion, he reviewed various G & G documents that were

ruling arose from appellants' failure to properly designate Ben-Artzi as an expert witness, with the court therefore barring any such testimony.[4]

A claim of trial court bias cannot be founded on legally correct rulings. (*Roitz v. Coldwell Banker Residential Brokerage Co., supra,* 62 Cal.App.4th at pp. 724-725 [rejecting claim of arbitrator's bias for denying continuance when appellant demonstrated no good cause for the request]; *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486 [though trial judge's remarks showed bias, misconduct claim rejected where court properly denied leave to amend complaint].)[5] After considering the issue of the unproduced documents on several occasions, the trial court here eventually found that Ben-Artzi had deliberately concealed them. Appellants contend in only the most conclusory manner that the court's rulings in regard to their discovery violations were incorrect. They have completely omitted any discussion or citation to authority in regard to the propriety of imposing evidentiary sanctions based on a party's failure to produce properly requested documents during discovery or to properly designate an expert witness. (See Code. Civ. Proc., §§ 2023, subds. (a)(6), (b)(3) [evidentiary sanctions may be proper for evasive discovery responses]; 2034, subd. (j) [authorizing exclusion of testimony by improperly designated expert witness;

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part of G & G's project file. Finding that those documents had not been produced by appellants during discovery, the trial court chose not to exclude the expert's testimony but decided to instruct the jury that it might draw adverse inferences from a party's failure to produce documents before trial.

[4] Appellants' counsel mentioned Ben-Artzi in the required expert witness designation, stating however that Ben-Artzi was not "subject to this . . . declaration" because he was a percipient witness and had not been retained to give an expert opinion. The lawyer apparently believed that no expert witness supporting declaration was therefore needed for Ben-Artzi when, in fact, it was required. (Code Civ. Proc., § 2034, subds. (a)(1) & (2), (f) [declarations required of parties, employees of parties, and retained experts].)

[5] For that matter, not even incorrect rulings are necessarily an indication of prejudice. (*Schrader Iron Works, Inc. v. Lee* (1972) 26 Cal.App.3d 621, 641.)

Juarez v. Boy Scouts of America (2000) 81 Cal.App.4th 377, 388-389 [discovery sanction orders reviewed for abuse of discretion].) Their claims of misconduct based on those rulings are therefore waived. (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700 (*Landry*).)

The same applies to two other discovery sanction rulings: the court's decision to have appellants' discovery responses read into the record, and its concomitant decision to craft a special jury instruction concerning the effect of appellants' failure to produce discoverable documents. The court said it would do so because it believed appellants deliberately concealed the documents, then tried three times to use them at trial. Appellants contend—without discussion or citation to authority—that BAJI Nos. 2.02 and 2.03 concerning the failure to produce stronger available evidence and the willful suppression of evidence should have been given instead. As a result, the issue is waived. (*Landry, supra,* 39 Cal.App.4th at pp. 699-700.) We alternatively hold that the disputed instruction is not reviewable because it is not part of the record on appeal. (*Brokaw v. Black-Foxe Military Institute* (1951) 37 Cal.2d 274, 280; *Beane v. Los Angeles Transit Lines* (1958) 162 Cal.App.2d 58, 59-60.)[6]

Appellants complain of two other evidentiary rulings: the trial court's refusal to permit cross-examination of Tomeo about something called the "critical path method" and its pretrial ruling that appellants could not pursue their theory that NAIC hastily paid off Centex without a proper investigation because it was afraid Centex would sue

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6 The reporter's transcript includes the language of a proposed instruction that the trial court said it thought it would give. Because counsel for both parties waived a transcription of the instructions, the transcript does not include the instruction actually given or, for that matter, any of the other instructions. Although appellants designated the instructions as part of the clerk's transcript, the instructions could not be located and appellants were directed to supply conformed copies of the instructions for inclusion in the record. The record does not show and appellants do not contend that they ever tried to do so. Their reply brief does not address NAIC's argument concerning the effect of the missing instructions.

for bad faith.[7] As to the first, appellants' counsel asked Tomeo whether he ever looked at a "critical path" to determine if there were reasons for G & G's inability to perform. The court sustained an objection that the question assumed facts not in evidence. Appellants do not discuss the propriety of that ruling and the issue is therefore waived. (*Landry, supra,* 39 Cal.App.4th at pp. 699-700.) As to the second, appellants neglect to mention that the trial court eventually allowed them to cross-examine Trotter on that very subject, then argue the issue to the jury.

Appellants' remaining claims of judicial bias rest on various incidents where they contend that by words or deed the court was demeaning or discourteous and, in some instances, conveyed to the jury that appellants, their lawyer and their witnesses were not trustworthy.

During a pretrial hearing, while discussing appellants' apparent failure to produce documents in their possession, the court told appellants' counsel, "[t]his is not a game playing exercise." That remark came in response to the assertion by appellants' counsel that information contained in Ben-Artzi's computer could not have been produced during discovery because the reports that were eventually generated came from a special program devised by Ben-Artzi. Characterizing such a contention as possible game-playing is not judicial misconduct. (*People v. Bronson, supra,* 263 Cal.App.2d at pp. 844-845; *People v. Harmon, supra,* 117 Cal.App.2d at pp. 517-518.)

When appellants' counsel tried to question a witness while seated at the counsel table, the court told him that all questioning was to be conducted from the lectern. This too strikes us a proper use of the court's power to control the conduct of the trial. Counsel's assertion that this was done in a harsh tone does not show judicial

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[7] To the extent appellants might contend they have challenged the merits of any other trial court rulings, we deem those issues waived because their arguments were unintelligible and unsupported by discussion or citation to authority. (*Landry, supra,* 39 Cal.App.4th at pp. 699-700.)

misconduct. (*People v. Walker* (1957) 150 Cal.App.2d 594, 604-605 [counsel's assertion that judge expressed his disbelief of a witness by his facial expressions was insufficient to show bias].)

The court directed appellants' counsel not to read from Tomeo's deposition. Counsel was trying to impeach Tomeo with his earlier deposition testimony, but appellants fail to acknowledge or discuss the reasons for the court's statement—it believed that the deposition questions did not correspond to the questions asked at trial. Because appellants have waived the underlying claim of error (*Landry, supra,* 39 Cal.App.4th at pp. 699-700), we again conclude that the trial court was properly regulating the conduct of the trial.

When cross-examined about the meaning of a document, appellants' expert replied that NAIC's lawyer should ask Tomeo what it meant. The court told the witness, "Sir, we don't need that kind of response, please." The witnesses' sarcastic answer merited that correction. (*People v. Mortensen* (1962) 210 Cal.App.2d 575, 584; *People v. Harmon, supra,* 117 Cal.App.2d at pp. 517-518.)

While cross-examining Gustafson, appellants' counsel asked whether Gustafson ever sent G & G a letter challenging Ben-Artzi's assertion that G & G had finished all available work. When Gustafson said he needed to look at his other letters, appellants' counsel said, "I looked at them, and I'm wondering if there's something that hadn't been produced where it says – where you contest to this, because I haven't seen it." The court then said to counsel, "Sir, don't testify." This, too, strikes us as a proper admonishment for an improper question.

Appellants contend that during their cross-examination of Trotter, when Trotter asked if he could explain his answer, the court said appellants' counsel did not want Trotter to explain. As appellants acknowledge, the transcript page they cite does not contain that comment. Relying on a declaration by Rafael Rosenfeld, they insist the exchange occurred. Our review of the record shows that the incident occurred during appellants' redirect examination of Tomeo, who had been called as a hostile witness

under Evidence Code section 776. Asked by appellants' counsel whether he believed a certain change order had been proper, Tomeo said, "That's not correct, and I can explain if you'd like me to." The court then said, "He doesn't want you to explain." Appellants ask that we view this as a disparaging comment intended to let the jury know that appellants' counsel was not interested in hearing a truthful response. A complete review of the record shows otherwise. On two occasions shortly before that exchange, Tomeo tried to give answers beyond the scope of the questions posed. Asked whether he investigated a certain matter, Tomeo said, "Well, let me explain, if I can. G & G had been paid $125,000 at the time of the default." Appellants' counsel replied, "That's not my question." Asked soon after whether he relayed certain comments by Ben-Artzi to NAIC, Tomeo said, "Well, there's more to that story." Appellants' counsel responded by saying, "You can answer just that question." The challenged comment was made very shortly after. Viewed in context, we do not believe the court was insulting appellants' counsel. Instead, it appears to us that the court was trying to control a talkative witness, thereby assisting appellants in their efforts to question him.

During appellants' direct examination of their expert, their lawyer asked a question about the project specifications, another document that appellants did not produce during discovery. Because of that, the court had earlier ruled that appellants could not use the specifications as evidence. When appellants' counsel asked the question about the specifications, the court said counsel was "trying to do by indirection something we discussed." Appellants have failed to address the propriety of the underlying discovery sanction, leading us to hold that the trial court was doing no more than regulating the conduct of the trial by enforcing its proper orders.

When appellants' expert testified about the proper sequence of work among the various construction trades on the project, NAIC moved to strike the answer because the witness was not qualified to give such an opinion. The trial court said it would strike the answer because it had not been responsive to the question asked and invited

appellants' counsel to reframe his question. Appellants contend that this somehow conveyed to the jury that their expert was not qualified. We find it incredible that the jury would conclude the judge had somehow signaled his belief that appellants' expert was unqualified when he struck the testimony on other grounds and gave appellants' counsel the chance to ask the question another way.

Appellants contend the court admitted it was prejudiced against them. When the court ruled that appellants could not pursue their theory that the change order for work on the second floor of the project formed a separate contract not subject to the bond, appellants' counsel for the first time accused the court of bias by preventing appellants from putting on a defense. The court replied, "Sir, any attitudes of this court were formed prior to the hearing of testimony when it was revealed – [.]" The judge then sent the jury out of the courtroom and said: "When this case was assigned here, I had no inclination one way or another as to what the outcome should be. But starting very early on, before the jury was selected, it began to come to my attention that there were irregularities in the conduct of the defense, and the court has been very seriously concerned with that. [¶] And you have attempted in various ways to excuse or justify those, and some of that has been by pointing the finger at the plaintiffs, a practice which does not invite admiration." The court and counsel then engaged in a long discussion of its reasons for excluding the change order evidence.[8] As we read the record, this was not an admission of bias. Instead, having been accused of bias by hindering appellants' defense, the court properly excused the jury, then explained that it was trying to deal with appellants' discovery violations and was not trying to prevent appellants from defending the action.

Appellants also complain of three other instances of alleged misconduct. The first was a sarcastic comment made shortly before trial began when discussing appellants' complaint against Centex, which had been dismissed some time earlier.

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8 Appellants' brief does not address this evidentiary ruling.

Noting that the complaint had been filed on December 23, the court said, "So you can serve it on Christmas Eve or whatever." The second involved a so-called ex parte communication with a juror when, during its law and motion calendar, with one of the trial jurors present, the court said: "Just a minute. I'm in the middle of trial right now, and I have a – and it's a construction-related case. And I have a situation where there is a claim that all the documents from one of the parties vanished, and – there are – I've got a juror from that case in here. Let me not say more." The third involved an incident where, in the absence of the jury, the court let appellants' counsel borrow its copy of the Code of Civil Procedure. According to three of the appellants and their lawyer, the court angrily threw the book at the lawyer and shouted "shit." According to NAIC's lawyer, when appellants' counsel asked for the code book, the judge tossed it onto the counsel table and said, "Here it is." We examine these three incidents under an alternative ground for affirming the judgment—the lack of prejudice to appellants.

Appellants' brief rests its claim of prejudice from the trial court's alleged misconduct on the declarations of two jurors submitted as part of their new trial motion. In short, the jurors stated that the judge appeared prejudiced against appellants, was rude to appellants' counsel and their witnesses, that the evidence and the court's instructions about concealing evidence influenced the jury's verdict, and that the judge's bias had an effect on the verdict. NAIC objected to the declarations on numerous grounds, including Evidence Code section 1150, which prohibits the use of juror declarations concerning the jury's subjective mental processes in order to impeach a verdict. These declarations clearly sought to convey the inferences and impressions of the jurors and how their perceptions of the judge's conduct affected their subjective thought processes. As a result, they violated Evidence Code section 1150. (*Putensen v. Clay Adams, Inc.* (1970) 12 Cal.App.3d 1062, 1083.)[9]

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[9] Even though we are obliged to disregard the juror declarations, we are troubled that some jurors believed the trial court so clearly conveyed a prejudice against appellants.

Appellants contend that NAIC waived the objection because the court did not rule on it. We disagree. At the hearing on the new trial motion, the court said that "[t]he juror affidavits, excluding inadmissible matters, do not demonstrate a basis for new trial . . . ." Having ruled in NAIC's favor after indicating in a general manner that it found portions of the declarations inadmissible, it would have been pointless for NAIC to press for a more specific ruling on its objections. (*People v. Hill* (1992) 3 Cal.App.4th 16, 33, fn. 5, disapproved on other grounds by *People v. Nesler* (1997) 16 Cal.4th 561.) Even if the objections were waived, however, we are not free to consider juror declarations that violate Evidence Code section 1150. Evidence of the jury's subjective, internal thought processes is, as a matter of substantive law, immaterial and without jural consequence. (*People v. Steele* (2002) 27 Cal.4th 1230, 1263-1264.) Even where evidence is admitted without objection, its legal effect is a matter for the appellate court. (*Tahoe National Bank v. Phillips* (1971) 4 Cal.3d 11, 23, fn. 18 [evidence violating parol evidence rule that was admitted without objection could not be used on appeal to show the judgment was supported by substantial evidence].) Because the declarations relied on the jurors' subjective thought processes to show prejudice from the trial court's supposed misconduct, they lack any probative value and we may not consider them. (*Putensen v. Adams, Inc., supra,* 12 Cal.App.3d at p. 1083.)

Accordingly, we are left with nothing other than the alleged acts of misconduct themselves to determine whether these acts prejudiced appellants. As to most, we have already determined that no misconduct occurred. As to the remaining three, as set forth below, we hold that they were not prejudicial. The trial court's comments about filing a complaint in order to serve it on Christmas Eve certainly appear sarcastic. Because they occurred before the jury was even impaneled, we fail to see how they affected the outcome of the case. The same is true of the incident with the book. Disregarding the conflicting evidence about what happened, if the incident occurred as alleged, it, too, was improper. Because the jury was not present, however,

it could not have affected the jury's deliberations. The court's statements about a claim of vanished documents, made while one of the jurors was present, appears to have been a careless slip of the tongue. Although it should not have occurred, because the jury properly heard evidence and was instructed about the issue of the missing documents, we do not believe it had any prejudicial effect on the outcome.

As a final alternative ground, we note that appellants never once objected to any of the asserted instances of misconduct. The closest they came was in response to the court's ruling that evidence about the effect of the change order for additional work would not be allowed, with appellants' counsel stating, "This court has been showing bias against us." A proper objection is necessary to allow the court to either develop a complete record of what actually happened or to correct its error. Having failed to do so, appellants' misconduct claims were waived. (*Fudge, supra,* 7 Cal.4th at p. 1108; *People v. Archerd, supra,* 3 Cal.3d at p. 636.)[10]

2. Claim of Misconduct by Counsel

Appellants contend that the surety's lawyer committed misconduct during his closing argument by telling the jury that Ben-Artzi did not produce information contained in his computer's hard drive when there was no evidence of that at trial. We note at the outset that appellants have failed to argue by way of either discussion or citation to authority the law applicable to misconduct of counsel. We therefore deem the issue waived. (*Landry, supra,* 39 Cal.App.4th at pp. 699-700.) We also note that objections were made as to only three of the several disputed statements, waiving the misconduct claim as to the others. (*Menasco v. Snyder* (1984) 157 Cal.App.3d 729, 733.)

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10 Finally, appellants contend that the court's purchase of doughnuts for the jury somehow contributed to its misconduct by aligning the jurors with the judge. Even disregarding our holding that no prejudicial misconduct occurred, this contention is wholly lacking in merit.

Even on the merits, we would still affirm. The disputed portions of counsel's argument all concern appellants' failure to produce documents, a subject that we have already addressed and deemed waived.[11] To the extent counsel was arguing about matters that were properly in evidence, no misconduct occurred. (*Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220, 1244-1245.) Appellants also contend that the surety's lawyer misstated the evidence when he told the jury that Ben-Artzi did not produce documents from his computer's hard drive. NAIC all but concedes that this is so, but contends this was a fair comment on the state of the evidence because the jury learned that appellants were asked to produce information from their computers. Because the jury was properly informed of appellants' failure to abide by their discovery obligations, we believe it made little difference whether they heard that some of the information came from Ben-Artzi's computer. The misstatement was therefore so minor that we deem it harmless. (*Id.* at pp. 1247-1248.)

3. The Verdict Is Supported By Substantial Evidence

The indemnity agreement signed by appellants said that "[i]n the event of any breach, delay or default asserted by [Centex], . . . the Surety shall have the right at its option and in its sole discretion and is hereby authorized . . . to take possession of any part or all of the work under any contract or contracts covered by [the bond], and at the expense of [appellants who] shall promptly upon demand pay to the Surety any and all losses, and expenses so incurred." The language of indemnity agreements is interpreted according to the law generally applicable to contracts. (*United States Elevator Corp. v. Pacific Investment Co.* (1994) 30 Cal.App.4th 122, 125.) Language such as this has been interpreted to mean that a surety can take over its bondholder's

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11 Appellants contend that it was misleading for the surety's counsel to argue that they failed to produce the missing documents because appellants tried to produce them at trial. We find this contention remarkable given that the issue arose because appellants deliberately concealed the documents until the time of trial.

job and seek indemnification for its costs, so long as it acted in good faith when determining whether to do so. (*Arntz Contracting Co. v. St. Paul Fire & Marine Ins. Co.* (1996) 47 Cal.App.4th 464, 482-484; *General Ins. Co. of America v. Singleton* (1974) 40 Cal.App.3d 439, 443-444.)

Appellants contend there is insufficient evidence to support a finding that NAIC conducted a good faith investigation before deciding to take over the project. Disregarding well-established rules of appellate procedure, they support their contention with a statement of facts that is selective, skewed and one-sided. As a result, we deem the issue waived. (*Oliver v. Board of Trustees* (1986) 181 Cal.App.3d 824, 832.) We alternatively hold there was sufficient evidence to support the judgment on this issue.

Appellants seize on Tomeo's statement that he never determined whether G & G defaulted on the subcontract as proof that no good faith investigation was done. Viewed in context with all the testimony, Tomeo said that Centex declared the default and he investigated all of Centex's allegations against G & G. His self-described "fact finding" mission included contacting Centex and G & G to ask for documentation and viewing the job site. He also spoke with the fire marshal who found certain deficiencies in G & G's work and reviewed the project plans. He began his investigation with an open mind. While Centex quickly responded and produced the documents it had, Ben-Artzi was uncooperative and produced no documents to rebut Centex's claims. His investigation showed that G & G had not completed the subcontract. Finally, there was abundant, albeit conflicting, evidence that G & G had breached the subcontract. If believed by the trier of fact, this evidence is more than sufficient to support a finding that NAIC conducted a good faith investigation.[12]

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[12] Appellants also contend that there was no evidence to support a judgment based on the terms of the bond. Because we hold that judgment was proper based on the indemnity agreement, we need not reach that issue.

DISPOSITION

For the reasons set forth above, the judgment is affirmed. Respondent to recover its costs on appeal.

NOT FOR PUBLICATION.

RUBIN, J.

We concur:

COOPER, P.J.

BOLAND, J.